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STATE OF WISCONSIN

BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

JOHN F. ROCHE

FINAL DECISION AND ORDER

RESPONDENT

94 APP 009

The parties to this action for the purpose of Wis. Stats. 227.53 are:

*John F. Roche
W10581 Cty. TT
Columbus, WI 53925*

*Bureau of Business and Design Professions
Real Estate Appraisers Board
P.O. Box 8935
Madison, WI 53708-8935*

*Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935*

The State of Wisconsin, Real Estate Appraisers Board, having considered the Stipulation agreement annexed hereto of the parties, in resolution of the captioned-matter makes the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED pursuant to jurisdiction and authority granted to the Board in Chapter 458, Wis. Stats. and sec RL 2.12, Wis. Adm. Code, that the Stipulation agreement annexed hereto, filed by the Complainants' attorney shall be and hereby is incorporated, made and ordered the Final Decision and Order of the State of Wisconsin, Real estate Appraisers Board.

Let a copy of this order be served on Respondent by certified mail.

Dated this 28th of June, 2000

LaMarr Franklin

Signature

STATE OF WISCONSIN

IN THE MATTER OF THE DISCIPLINARY :

PROCEEDINGS AGAINST

JOHN F. ROCHE,

STIPULATION

RESPONDENT.

94 APP 009

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Respondent John F. Roche, his Attorney Michael R. Bauer, and Complainant's Attorney, Henry E. Sanders, Division of Enforcement, having reached agreement for disposition of the captioned-matter, stipulate and agree as follows:

1. Respondent John F. Roche (Roche) of W10581 CTY TT, Columbus, Wisconsin, was at all time material to the complaint, certified as a Certified Residential Appraiser, and has been so certified under the provisions of ch. 458, Wis. Stats., since July 2, 1992.

2. This Stipulation shall be submitted to the Real Estate Appraisers Board (Board) for approval and disposition of this matter. If the terms of the Stipulation are not acceptable to the Board, then the parties shall not be bound by any of the provisions of the Stipulation.

a. This Stipulation is dispositive of Investigative Complaint #94 APP 009.

3. Respondent has been advised of his right to a public hearing on each and every allegation of the complaint, but hereby freely and voluntarily waive his right to a hearing in this matter on the condition that all provisions of this Stipulation be acceptable and approved by the Board.

a. Respondent further agrees to waive any appeal of the Board's Final Decision and Order adopting the stipulation agreement.

4. The Department received a complaint against Respondent from Jerome Lund of Perion & Associates, relating to Respondent's performance of three (3) separate appraisals on January 10, 1994, of land sought by the City of Columbus, Wisconsin, and Columbus Water and Light, for the acquisition of a water main and electric line easement, a partial taking. The Complainant had previously appraised the same subject properties.

5. The Complainant alleged specific violations of USPAP, and section 32.09, Wis. Stats., Eminent Domain Rules Governing Determination of Just Compensation. Complainant alleged in pertinent part that Respondent variously violated USPAP's:

"1) Ethics Provision regarding conduct and advocacy

2) Competency Provision regarding lack of knowledge and competency

6. COMPLAINANT'S GENERAL COMMENTS

The following includes some general comments regarding the complaint and specific violations of the Uniform Standards of Professional Appraisal Practice.

The compensation does not reflect market value as defined by Wisconsin Statute 32.09 or the definition adopted by the Appraisal Foundation. Any appraiser with any qualifications or appraisal knowledge would not have utilized sales to government entities purchased under a threat of condemnation to determine market value.

Market value is defined as:

The most probable price in terms of money which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and

knowledgeably, and assuming the price is not affected by undue stimulus.

Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller and buyer under conditions whereby:

1. buyer and seller are typically motivated.
2. both parties are well informed or well advised, and both are acting in what they consider to be their best interest.
3. a reasonable time is allowed for exposure in the open market.
4. payment is made in cash or its equivalent.
5. financing, if any, is on terms generally available in the community at the specified date and typical for the property type in its locale.
6. the price represents a normal consideration for the property sold unaffected by special financing amounts and/or terms, services, fees, costs, or credits incurred in the transaction.

In all cases the appraiser uses purchases of properties by government agencies, most with eminent domain powers, which are not arms-length sales and have no bearing on the subject's market value. In all cases, the appraiser identifies the subject as the larger acreage parcel, then utilizes the acreage in the easement as the subject and essentially defines it as the larger parcel in a fee taking. Moreover, the reports are ethically and professionally erroneous, with the majority of the text being a direct plagiarism of the reports that I completed for the City of Columbus and Columbus Water and Light.

The appraiser did not follow any before or after scenario for any of the reports. Additionally, other damages such as drain tile installation and crop losses are not considered compensatory under Statute 32.09, and are essentially irrelevant.

The following specific issues are delineated:

Effects of the Easement

1. Drain tile damage and relocation described. This is totally inappropriate as the tiling will be replaced in-kind as part of the construction process.
2. 1.5-acre area along STH 69 reduced to nonagricultural use. This is also totally false, as the area will continue to be available for continued cropland uses. There are numerous examples of similar size sites being cropped by large agricultural operations.
3. 300 foot separation of poles depicted as being similar to fence line with the result that the machinery would not be able to till between the poles. Again, this is totally preposterous. The current owner tills right up against the existing towers, and a similar situation could continue with the wood poles.
4. The liability issue has no relevance to the estimates of just compensation and market value. The mention of this point illustrates the incompetency of the appraiser and has no bearing on compensatory questions.
5. The potential irrigation from the pole sites is purely speculative and additional tiling costs are not appropriate.

Loss and Damages

1. Establishes a fee value for the 2.43 acres in the easement of \$4,000 per acre based on sales of properties that do not have any bearing on the subject parcel. The sales are not arms-length and have no relevance to market value as the appraiser defines in his own report. The value of the easement area is based on the value of the larger parcel, unless the easement could be utilized as a separate entity, which is not the case. The appraiser has no concept of a before and after valuation and repeatedly moves from real estate valuation to personal property losses.
2. Estimates a cost to cure to replace drain tiling which is totally inappropriate, as they are to be remedied as part of the project.
3. Estimates an annual fee for return on investment. This is particularly inventive, but totally wrong. The severance damages are based on a rental loss for the easement area and the 13.5 acres he determines to be nonagricultural. The easement cannot be compensated for

loss of fee value and rental income both. In his report he rejects the income approach and then turns around and uses the theoretical rental loss for areas he has decided can no longer be tilled. The rental loss is to be paid annually for infinitum, another novel approach.

4. The crop loss estimate is by far the greatest in monetary value, and totally lacks any basis in real estate analysis or appraisal practice. The appraiser envisions a series of natural occurrences that could result in flooding of adjacent land areas, and then calculates a loss of crops due to inability to plant or harvest in that year. Again, this is making outlandish assumptions about theoretical conditions that have no bearing on the after condition of the subject parcel, or just compensation based on a before and after scenario or Statute 32.09.

In summary these reports whatever they may be, are not appraisals by any definition or accepted methods adopted by the Appraisal Institute or practitioners in the field, and have no legitimate basis for the compensation estimates. The reports violate numerous standards applicable to appraisals completed by appraisers certified by the State of Wisconsin, and have no bearing on the subject in a before and after valuation scenario. the comparables are so illegitimate as to be humorous. I regret that I have an association with the reports through blatant plagiarism, although the valuation and damages are totally the other appraiser's inventions.

In my past experience, I have seen many appraisal reports that are lacking, but the extent of erroneous valuation methods drove me to issue a complaint regarding this person in an attempt to make him aware that there are consequences for such appraisal practices."

7. In response to the allegations, Respondent provided documentation denying Complainant's allegations.

8. The case advisor, Certified General appraiser expert assigned to the complaint reviewed and analyzed the subject appraisals, responses and documentation and concluded in pertinent part that the Respondents' appraisals contained several violations of USPAP, to wit:

The appraisals under review are for partial takings for utility easements and not full takings. This factor is one of the major concerns of this complaint since there is no support that the utility company is making a full taking of the subject property but rather only an easement over the subject properties appraised.

The appraisals are of three separate properties. Previous appraisals were made by the complainant of this case, Jerome Lund.

After careful review, I have concluded at the following violations of USPAP by Mr. Roche, not inclusive:

Competency Provision

I am neither confident that the appraiser has the experience, education or knowledge to complete the assignment, nor did he provide for such in the written report.

Ethics Provision

A significant amount of Mr. Roche's reports have been plagiarized from Mr. Lund's report with several areas of total verbatim. This is also considered misleading (Standard 2-1(a)).

Standards 1-1 and 2-1

All portions of these standards appear to be violated. A before and after value should have been provided for in each appraisal which was not made in any of the reports.

The highest and best use of each subject property was identified as a "cash crop farm" yet comparables with other highest and best uses were generally used including those with sewer and water accessibility. Sewer and water accessibility was never supported in any of Mr. Roche's reports.

The cause of wetness to the subject farm's caused by installation of utility towers is not supported and considered very speculative.

Mr. Roche in the Thomas and Yohn farms estimated a loss in crops for the subsequent crop year with an effective date of appraisals in January. This is both misleading, inappropriate and further, an item of personal property (Standard 1-2(3e)).

He estimated the taking as a full taking or full fee simple title yet it is not a partial taking. Then at a later event in the appraisal, he estimated a loss in value of the same parcel for crops.

Land rents are not supported and regardless, the methodology utilized is totally inappropriate. (Standard 1-4(4)).

Further, there were never any exhibits provided in the report for the area that would be affected by the installation of the towers and areas that would need tiling.

Standard 2-3

Totally lacking in each report.

Summary

Mr. Roche has carelessly and incompetently performed these appraisals that would be both misleading and potentially harmful to the public. For instance, using comparable sales and provided for a full fee simple loss in value provides a very inflated and misleading loss in value for the properties. In return, the complainant, Mr. Lund, appears to have very competently and appropriately valued the subject properties and takings and provide strong support for his conclusions. There are also State laws which have clearly been violated including the maintenance of proper records for 5 years. The use of radio tower value in the highest and best use analysis is an apples to oranges comparison and violates the competency provision.

9. Accordingly, based upon the above enumerated facts, Respondent has violated those USPAP's provisions enumerated by the case advisor, appraiser expert, and therefore, is also deemed to have violated secs. 458.26(3)(b)-(c), Wis. Stats., (b) engaged in unprofessional or unethical conduct in violation of rules promulgated under sec. 458.24, and (c) engaged in conduct while practicing as an appraiser which evidences a lack of knowledge or ability to apply professional principles or skills; violated secs. RL 86.01(1)-(2), (6), Wis. Adm. Code, (1) . . . appraiser shall comply with the Standards of Practice established by ch. 458, Stats., and chs. RL 80-86, and the standards set forth in Appendix I (USPAP), (2) an appraisal shall conform to USPAP . . . , and (6) . . . appraiser shall not offer to perform nor perform services which he/she is not competent to perform through education or experience.

10. Based upon the above and in settlement of this matter, Respondent Roche hereby consents, accepts and agrees to be reprimanded, pay \$500.00 to the Department as part assessment of costs, and to cease and desist from performing partial and full taking, eminent domain-condemnation type of appraisals until and unless he demonstrates to the Board that he is competent to perform such appraisals.

11. The \$500.00 part assessment of costs shall be payable by cashier's check or money order, made payable to the Department of Regulation and Licensing and submitted to the Department's monitor:

Ted Nehring

Monitor

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

12. The part assessment of costs shall be paid at the time of the execution of the Stipulation or within three (3) months of the effective date of the Board's order adopting the stipulation agreement.

13. Upon receipt of the Board's order adopting the stipulation agreement, Respondent shall forthwith submit to Ted Nehring supra, copies of any and all appraisers' licenses/certificates previously issued to him, to receive limited licenses/certificates, and they shall be returned to him forthwith.

14. Respondent agrees that this stipulation agreement may be incorporated into the Board's Final Decision and Order adopting the stipulation agreement.

15. Respondent further agrees that Complainant's attorney Sanders, and the case advisor assigned to the case, may appear at any closed deliberative meeting of the Board with respect to the stipulation, but those appearances are limited solely to clarification, justification, and to statements in support of the stipulation and for no other purposes.

John F. Roche Date

Respondent

Henry E. Sanders Date

Complainant's Attorney